IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

§ § §

In re Application of:

TODD ET AL.

Serial No.:

10/664,126

Filed:

SEPT. 17, 2003

Title:

"IMPROVED

SUBTERRANEAN

TREATING

TREATMENT FLUIDS AND METHODS SUBTERRANEAN

FORMATIONS"

Group Art Unit:

1796

Examiner:

FIGUEROA, JOHN J.

Atty. Docket No: 2003-IP-010228U1

CERTIFICATE OF FILING ELECTRONICALLY VIA EFS 37 C.F.R. § 1.8

I HEREBY CERTIFY THAT I HAVE A REASONABLE BASIS FOR BELIEF THAT THIS CORRESPONDENCE IS BEING SUBMITTED TO THE UNITED STATES PATENT AND TRADEMARK OFFICE VIA EFS (ELECTRONICALLY) ON THE DATE INDICATED BELOW, AND IS ADDRESSED TO:

> HONORABLE COMMISSIONER FOR PATENTS P.O. Box 1450 ALEXANDRIA, VA 22313-1450

MAIL STOP APPEAL BRIEF - PATENTS **Commissioner for Patents** P.O. Box 1450 **Alexandria, VA 22313-1450**

100 ox

DATE OF SUBMISSION: **ELECTRONIC FILING (EFS)** APRIL 20, 2009

SECOND SUPPLEMENTAL APPELLANTS' BRIEF (37 C.F.R. § 41.37)

This supplemental brief is submitted in support of Appellants' original Brief filed on October 20, 2008, in response to the Notice of Non-Compliant Appeal Brief mailed on March 30, 2009 ("the Notice"). The Notice states that "[t]he brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims," and that "[t]he brief does not contain a correct copy of the appealed claims as an appendix thereto." Specifically, the Notice states that "[c]laims 82 and 83 were examined in the Final Office Action of March 18, 2008 but are not discussed in Section III of the Appeal Brief. Nor are these claims listed in Appendix A entitled 'Claims Involved in Appeal'." Appellants submit the following Section III to replace that section in their original

brief. As noted in Section III below, because the rejections of claims 82 and 83 are not appealed, those claims are not listed in Appendix A.

Please replace Section III of Appellants' brief with the following text.

III. STATUS OF THE CLAIMS

The application as originally filed contained 68 claims. Claims 1-14, 19, 32-46, and 69-81 were cancelled in a previous response. Claims 24-27, 31, 51-54, and 68 have been withdrawn in response to the Examiner's restriction requirement. Claims 15-18, 20-23, 28-30, 47-50, 55-67, and 82-83 are pending.

The Examiner has finally rejected claims 15-18, 20-23, 29, 30, 47-50, 56-64, 66, and 67 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,387,986 to Moradi-Araghi *et al.* ("Moradi-Araghi"). Appellants disagree with these rejections.

The Examiner also has finally rejected claims 15, 23, 28, 47, 50, 55, 65, 82, and 83 under 35 U.S.C. § 103(a) as being unpatentable over *Moradi-Araghi* in view of U.S. Patent No. 5,728,652 to Dobson *et al.* ("*Dobson*"), U.S. Patent No. 5,191,931 to Himes *et al.* ("*Himes*"), or U.S. Patent No. 4,531,594 to *Cowan* ("*Cowan*"). Appellants disagree with these rejections.

Appellants herein appeal the final rejections of claims 15-18, 20-23, 28, 29, 30, 47-50, and 55-67 as improperly rejected. A listing of all claims involved in this appeal is provided in Appendix A in this Brief. As claims 82 and 83 have not been twice rejected, those rejections are not appealed here and claims 82 and 83 are not listed in Appendix A.

Appellants believe that there are no fees due in association with this filing. However, should the Commissioner deem that any additional fees are due, including any fees for extensions of time, the Commissioner is authorized to debit Baker Botts L.L.P.'s Deposit Account No. 02-0383, Order Number 063718.0187.

Respectfully submitted,

Elizabeth L. Durham

Registration No. 59,509

BAKER BOTTS L.L.P.

One Shell Plaza 910 Louisiana

Houston, TX 77002

Telephone: 713.229.2104 Facsimile: 713.229.7704

Email: liz.durham@bakerbotts.com

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